Supreme Court, U.S.
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No. _____

In the Supreme Court of the United States

FRANK J. MARCONE,

Petitioner,

v.

OFFICE OF DISCIPLINARY COUNSEL,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Pennsylvania

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

I. WHETHER THE PENNSYLVANIA SUPREME COURT MAY ORDER AN ATTORNEY ADMITTED TO PRACTICE IN FEDERAL COURT TO CLOSE THE OFFICE HE MAINTAINS IN THE DISTRICT WITHIN THE STATE WHERE THE FEDERAL COURT PRESIDES?

II. WHETHER THE PENNSYLVANIA SUPREME COURT MAY HOLD AN ATTORNEY ADMITTED TO PRACTICE BEFORE THE EASTERN DISTRICT FOR PENNSYLVANIA IN CONTEMPT FOR HAVING AN OFFICE IN PENNSYLVANIA?

INTERESTED PARTIES

Counsel for the Petitioner, Frank Marcone, certifies that the following persons and entities have or may have an interest in the outcome of this case:

1. Honorable Chief Justice Cappy, Pennsylvania Supreme Court;

2. Paul J. Killion, Esquire, Chief Disciplinary Counsel, Harrisburg, Pennsylvania;

3. Frank J. Marcone, Esquire, Petitioner

4. Office of Disciplinary Counsel;

5. Pennsylvania Supreme Court;

6. Richard L. Rosenbaum, Esquire, Attorney for Petitioner.

Respectfully submitted,

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TABLE OF CONTENTS

QUESTIONS PRESENTED FOR REVIEW i

I. WHETHER THE PENNSYLVANIA SUPREME COURT MAY ORDER AN ATTORNEY ADMITTED TO PRACTICE IN FEDERAL COURT TO CLOSE THE OFFICE HE MAINTAINS IN THE DISTRICT WITHIN THE STATE WHERE THE FEDERAL COURT PRESIDES? i

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INTERESTED PARTIES ii

TABLE OF CONTENTS iii

TABLE OF CITATIONS AND AUTHORITIES v

PETITION 1

OPINION BELOW 2

STATEMENT OF JURISDICTION 2

STATUTORY AND OTHER PROVISIONS INVOLVED 3

STATEMENT OF THE CASE 4

A. Course of Proceedings and Disposition of the Court Below 4

B. Statement of the Facts 4

REASONS FOR GRANTING THE WRIT 6

CONCLUSION 13

APPENDIX 1a

A. Order Denying Frank J. Marcone's Petition for Reconsideration and Reargument

B. Decision of the Supreme Court of Pennsylvania *Office of Disciplinary Counsel v. Marcone*, No. 699

TABLE OF CITATIONS & AUTHORITIES

Cases **Page**

Baylson v. Disciplinary Board of the Supreme Court of Pennsylvania, 975 F.2d 102, 61 U.S.L.W. 2165 (1992) 11

Fidelity Federal Sav. & Loan Ass'n v. DeLa Cuesta, 458 U.S. 141, 102 S.Ct. 3014,71 L.Ed.2d 664 (1982) 11

Frazier v. Heebe, 482 U.S. 641 (1987) 6, 10

Selling v. Radford, 243 U.S. 46 (1917) 10

Silverman v. State Bar of Texas, 405 F.2d 410 (5th Cir. 1968) 11

Sperry v. Florida, el rel. Florida Bar, 373 U.S. 379, 83 S.Ct. 1322, 10 L.Ed. 2d 428 (1963) 6, 7, 10, 11

Supreme Court of New Hampshire v. Piper, 470 U.S. 274 (1985) 6, 9

Theard v. *United States*, 354 U.S. 278 (1957) 10

Western & Southern Life Ins. Co. v. State Board of Equalization of California, 451 U.S. 648 (1981) 3

Constitutional Provisions

U.S. Const. art. I, § 8 3
U.S. Const. art. IV, § 2 . . . . . 2, 3, 6, 9
U.S. Const. art. VI, Cl. 2 . . . . . *passim*
U.S. Const. amend. I 4

Statutes and Rules

28 U.S.C. § 1654 3
28 U.S.C. § 2701(a) 3
United States Supreme Court Rule 10(b) 2
United States Supreme Court Rule 10(c) 2

Other Sources

Comisky & Patterson, *The Case for a Federally Created National Bar by Rule or by Legislation,* 55 Temp. L. Q. 945, (1982) 10

Simonelli, *State Regulation of a Federal License to Practice Law,* 56 N. Y. State Bar J. 15 (May 1984) 10

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2004

No:

FRANK J. MARCONE,

Petitioner

v.

OFFICE OF DISCIPLINARY COUNSEL
COMMONWEALTH OF PENNSYLVANIA

Respondent.

On Petition for Writ of Certiorari to the Pennsylvania Supreme Court
Or, in the Alternative
Petition for a Writ of Mandamus
Petition for Writ of Prohibition
Petition for Writ of Vacutor

Frank J. Marcone respectfully petitions the Supreme Court of the United States for a Writ of Certiorari to review the August 16, 2004 opinion and the September 16, 2004, Order Denying Motion for Rehearing of the Supreme Court of Pennsylvania, rendered and entered in case number 690 Disciplinary Docket No. 2.

OPINION BELOW

This Petition for Writ of Prohibition results from an Opinion which was filed by the Pennsylvania Supreme Court on August 16, 2004. The Opinion serves to prohibit a federally licensed attorney from maintaining an office in any State where the attorney is not licensed in State Court despite the attorney limiting his practice to Federal law exclusively in the United States Federal District Court for the Eastern District of Pennsylvania, where he remains in good standing. The Petitioner asserts such a prohibition is in violation of the Supremacy Clause of the United States Constitution, the Privilege and Immunity Clause; and well settled United States Supreme Court case law.

STATEMENT OF JURISDICTION

This Petition is a direct appeal from the Opinion by the Pennsylvania Supreme Court and jurisdiction of this court rests under the provisions of Rule 10(b) and (c) of the Supreme Court Rules, which state in part:

> (b) A state court of last resort has decided an important Federal question in a way that conflicts with the decision of . . . a United States Court of Appeals.
>
> (c) a state court . . . has decided an important question of federal law . . . or has decided an important federal question in a way that conflicts with relevant decisions of this court.

Id.

STATUTORY AND OTHER PROVISIONS INVOLVED

Petitioner intends to rely upon the following constitutional provisions, treaties, statutes, rules, ordinances and regulations:

The Supremacy Clause of the United States Constitution, United States Constitution Article VI, Clause 2. State are bound by Federal law which nullifies any inconsistent state law.

The Privileges and Immunities Clause of Article IV, Section 2 prohibits a State Bar Association from prohibiting a federally licensed attorney from conducting business in an office located within that Federal district.

Title 28 U.S.C. Section 2701(a) (the Supreme Court and all courts established by act of Congress shall prescribe rules for the conduct of their business) and Title 28 U.S.C. Section 1654 ("In all courts of the United States, the parties may plead and conduct their own cases personally or by counsel as by the rules of such court, respectively, are permitted to manage and conduct cause therein".)

The United States Constitution provides that "Congress shall have Power ... to regulate Commerce ... among the several states". U.S. Const. art. 1 § 8. While the Commerce Clause expressly speaks only to the ability of Congress to regulate interstate commerce, it has been interpreted to contain an implied limitation of the power of the States to interfere with or impose burdens or interstate commerce. *Western & Southern Life Ins. Co. v. State Board of Equalization of California*, 451 U.S. 648, 652 (1981).

The prohibition of having an office would directly affect the right of association that is inherent in the First Amendment analysis.

STATEMENT OF THE CASE

A. Course of Proceedings and Disposition of the Court Below

The Petitioner seeks relief from an Opinion from the Pennsylvania Supreme Court which held him in contempt of court for maintaining an office in Pennsylvania from which he exclusively engages in the practice of Federal law pursuant to a license granted by the United States Federal District Court for the Eastern District of Pennsylvania. This is the Petition for Writ of Certiorari, Alternatively for Prohibition, Mandamus or Vacutor.

B. Statement of the Facts

On October 11, 1989, the Petitioner was suspended for a four year period from the practice of law before the Bar of the Supreme Court of the Commonwealth of Pennsylvania. The Petitioner filed for reconsideration on the basis of information which he claimed had been hidden from him, which he believed would prove he had been truthful in his testimony before the Disciplinary Hearing Committee, and that the complaining witness had lied. On July 19, 1990, *per curiam* Order, the Pennsylvania Supreme Court vacated the October 11, 1989 Order and reinstated the Petitioner to good standing. That Order also directed the Disciplinary Board of the Commonwealth of Pennsylvania to "take additional testimony" and render a report.

Five years later, the Disciplinary Hearing Committee concluded the Petitioner had been truthful, and that the complaining witness had lied and the $2,000 bail refund involved in the controversy was a part of the Petitioner's fee. Nonetheless, in violation of the Rules of Disciplinary Enforcement, the Petitioner was re-suspended.

The Petitioner continued to protest and to seek review but was ignored by both the Disciplinary Board as well as the Pennsylvania Supreme Court. The reinstatement of the suspension was on July 5, 1995 and the suspension expired on September 28, 1998.

On September 28, 1998, the United States Federal District Court for the Eastern District of Pennsylvania, having conducted hearings on the morals, character and qualifications of the Petitioner, reinstated him from a reciprocal suspension imposed by that Court. The Petitioner remains in good standing before the United States Federal District Court for the Eastern District of Pennsylvania. He therefore is in possession of a federally issued license to practice law in the federal district court.

On August 16, 2004, after an argument before the Pennsylvania Supreme Court on May 14, 2003, the Pennsylvania Supreme Court issued an Opinion finding the Petitioner to be in contempt of the 1995 Order of Suspension. The contemptuous act of contempt surrounded an allegation that the Petitioner maintained an office wherein he conducted legal matters limited to his licensed Federal practice, and that the office was within the geographical boundaries of the Commonwealth of Pennsylvania. The Pennsylvania Supreme Court concluded that the state has exclusive jurisdiction over any lawyers within the Commonwealth of Pennsylvania, and by the exercise of that exclusive jurisdiction, the Pennsylvania

Supreme Court could restrict an attorney's actions, even if the attorney engaged solely in a Federal practice and had a Federal license in good standing from "practicing law" within the confines of the Commonwealth of Pennsylvania.

The Petitioner avers the Pennsylvania Supreme Court's holding is in violation of the Supremacy Clause of the United States Constitution and further is in direct conflict of the ruling by this Honorable Court in *Sperry v. Florida, el rel. Florida Bar*, 373 U.S. 379, 83 S.Ct. 1322, 10 L.Ed.2d 428 (1963), and case law following the law enunciated therein. It also violates the Privileges and Immunities Clause of Article IV, Section 2 and is in direct conflict with this Honorable Court in *Frazier v. Heebe*, 482 U.S. 641, 648 (1987); *Supreme Court of New Hampshire v. Piper* , 470 U.S. 274 (1985).

REASONS FOR GRANTING THE WRIT

The Opinion filed by the Pennsylvania Supreme Court unlawfully restricts a federally licensed attorney from maintaining a law office in the Commonwealth of Pennsylvania despite the fact that the office is utilized exclusively for the pursuit of a federal practice alone in violation of the Supremacy Clause and Privileges and Immunities Clause of the United States Constitution.

The Supremacy Clause of the United States Constitution provides that states are bound by Federal law and the Federal law nullifies any inconsistent state law. (U.S. Const. art. VI, Cl. 2.)

The Petitioner asserts that the decision below unlawfully restricts and prohibits him from having a physical office in the Commonwealth of Pennsylvania or any other state in the

country, and unlawfully restricts his right to practice law pursuant to the license issued by the United States Federal District Court for the Eastern District of Pennsylvania.

In 1963 Chief Justice Warren, writing for a unanimous court, in the case of *Sperry v. Florida, e. re. Florida Bar*, 373 U.S. 379, 83 S.Ct. 1822, 10 L.Ed.2d 428 (1963), determined the State of Florida lacked the power to regulate the law practice of a federally licensed patent attorney. *Sperry* supports Frank Marcone's instant Petition and prohibits the State Bar Association from prohibiting federally licensed attorneys from having law offices in any state.

Sperry was a lay person, but qualified to use the title "patent attorney." He never passed the bar examination in any jurisdiction, and other than he had a Federal license, he was in complete violation of the Rules of the Supreme Court of Florida. Mr. Sperry hd been admitted to practice before the United States Patent Office and thereby, had been granted a Federal license to process patents before the office.

The Florida Supreme Court concluded Mr. Sperry's actions constituted the "practice of law" and enjoined Sperry from holding himself out as a patent lawyer in the State of Florida.

Chief Justice Warren, speaking for a unanimous court stated:

> We do not question the determination that under Florida law the preparation and prosecution of patent applications for others constitutes the practice of law . . . Such conduct inevitably requires the practitioner to consider and advise his clients as to the patentability of their inventions under the statutory criteria . . . as well as to consider the

advisability of relying upon alternative forms of protection which may be available under statute law. It also involves his participation in the drafting of the specification and claims of the patent application . . .which this court long ago noted 'constitute(s) one of the most difficult legal instruments to draw with accuracy. . .' And upon rejection of the application, the practitioner may also assist in the preparation of amendments, which frequently requires written argument to establish the patentability of the claimed invention under the applicable rules of law . . . Nor do we doubt that Florida has a substantial interest in regulating the practice of law within the State and that, in the absence of Federal legislation, it could validly prohibit non-lawyers from engaging in this circumscribed form of patent practice. *But the law of the State, though enacted in the exercise of powers not controverted, must yield when incompatible with Federal legislation.* Congress has provided that the Commissioner of Patents 'may prescribe regulations governing the recognition and conduct of agents, attorneys, or other persons representing applicants or other parties before the Patent Office,' . . . *The current regulations establish two separate registers on which are entered the names of all persons recognized as entitled to represent applicants before the Patent Office in the preparation and prosecution of applications for patent . . . One register is for attorneys at law, and the other is for non-lawyer 'agents.' . . . A person may be admitted under either category only by establishing 'that he is of good moral character and of good repute and possessed of the legal and scientific and technical qualifications necessary to enable him to render applicants for patents valuable service, and is otherwise competent to advise and assist them in the presentation and*

> *prosecution of the applications before the Patent Office.* The statute thus expressly permits the Commissioner to authorize practice before the Patent Office by non-lawyers, and the Commissioner has explicitly granted such authority. *If the authorization is unqualified, then, by virtue of the Supremacy Clause, Florida may not deny to those failing to meet its own qualifications the right to perform the functions within the scope of the Federal authority. A State may not enforce licensing requirements which, though valid in the absence of Federal regulation, give 'the State's licensing board a virtual power of review over the Federal determination' that a person or agency is qualified and entitled to perform certain functions, or which impose upon the performance of activity sanctioned by Federal license additional conditions not contemplated by Congress. 'No State law con hinder or obstruct the free use of a license granted under an act of Congress.*

[Emphasis added].

In *Supreme Court of New Hampshire* v. *Piper*, 470 U.S. 274 (1985), the Court held that a Rule by a State Supreme Court that limited bar admission to state residents violated the Privileges and Immunities Clause of Art. IV, § 2. In the context of that case, the Court considered several contentions quite similar to those presented here. The Court rejected the notion that nonresident attorneys should be presumed to be less competent or less available than resident attorneys. 470 U.S. at 285-286. We held that a State may discriminate against nonresident attorneys only where its reasons are substantial and the difference in treatment bears a close relationship to those reasons.

As set forth in *Frazier*:

> Rules that discriminate against nonresident attorneys are even more difficult to justify in the context of federal-court practice than they are in the area of state-court practice, where laws and procedures may differ substantially from State to State. *See* Comisky & Patterson, *The Case for a Federally Created National Bar by Rule or by Legislation,* 55 Temp. L. Q. 945, 960-964 (1982). There is a growing body of specialized federal law and a more mobile federal bar, accompanied by an increased demand for specialized legal services regardless of state boundaries. *See* Simonelli, *State Regulation of a Federal License to Practice Law,* 56 N. Y. State Bar J. 15 (May 1984). The Court's supervisory power over federal courts allows the Court to intervene to protect the integrity of the federal system, while its authority over state-court bars is limited to enforcing federal constitutional requirements. Because of these differences, the Court has repeatedly emphasized, for example, that disqualification from membership from a state bar does not necessarily lead to disqualification from a federal bar. *See Theard* v. *United States*, 354 U.S. 278, 282 (1957); *Selling v. Radford*, 243 U.S. 46, 49 (1917); *cf. Sperry* v. *Florida ex rel. Florida Bar*, 373 U.S. 379, 385-387 (1963).

The United States Supreme Court has ". . . the prerogative to review rules governing bar admission regulations to determine whether they are consistent with "the principles of right and justice." *Frazier* at 654, n.5.

The Petitioner herein is not requesting this Honorable Court sit in judgment of Pennsylvania State Bar disciplinary

proceedings. That is a State matter. [1] The important and extraordinary Federal question which must be addressed is the extent a state bar association may restrict a federally licensed lawyer from maintaining an office limited solely to Federal district court matters.

In 1968, the Fifth Circuit examined a similar issue in *Silverman v. State Bar of Texas*, 405 F.2d 410 (5th Cir. 1968), and citing the opinion in *Sperry, supra*, held that when state law touches on an area covered by Federal statutes, Federal policy may not be set at naught and its benefits denied by state law, even if that law is enacted in exercise of otherwise undoubted state power.

In 1992, the Third Circuit Court of Appeals examined an issue related to whether a Rule adopted by the Pennsylvania Supreme Court could be forced to apply to the United States Attorneys in Pennsylvania. The Disciplinary Board had urged the court to enforce the rule that prosecutors intending to subpoena lawyers before the grand jury must first seek and procure judicial approval. The opinion in that case, *Baylson v. Disciplinary Board of the Supreme Court of Pennsylvania*, 975 F.2d 102, 61 U.S.L.W. 2165 (1992), explained the test was whether the substance actually conflicts or is incompatible with Federal law, (*citing Sperry, supra*), and *Fidelity Federal Sav. & Loan Ass'n v. DeLa Cuesta*, 458 U.S. 141, 153, 102 S.Ct. 3014, 71 L.Ed.2d 664 (1982).

The court found that: "under the Supremacy Clause . . . when state law conflicts or is incompatible with Federal law, the state law is preempted by Federal law . . . Preemption

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[1] The suspension had expired on September 28, 1998 over six years ago.

also occurs when the state regulation actually conflicts or is incompatible with Federal law. Finally, the United States Supreme Court has made clear that these principles apply even when the area being regulated by Federal law is one of special concern to the state."

The action taken by the Pennsylvania Supreme Court in the Opinion dated August 16, 2004 is in violation of the Supremacy Clause of the United States Constitution and must be prohibited by this Court.

CONCLUSION

This is a direct appeal from the action of the Pennsylvania Supreme Court and This Court is the sole determiner of the propriety of the effort to extend the power of the State Supreme Court in violation of the provisions of the Supremacy Clause.

Therefore, it is appropriate to issue a Writ of *Certiorari* upon the Pennsylvania Supreme Court as is required by law.

Respectfully submitted,

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BY _____
RICHARD L. ROSENBAUM

Ft. Lauderdale, Florida
_____, 2004

APPENDIX A

IN THE SUPREME COURT OF PENNSYLVANIA

CASE NO. J-64-2003

No. 690 Disciplinary Docket No. 2

Attorney Registration No. 08967
(Delaware County)

OFFICE OF DISCIPLINARY COUNSEL, Petitioner	)
v.	)
FRANK J. MARCONE, Respondent	)

ORDER

AND NOW, this 16th day of September, 2004, Respondent Frank J. Marcone's Petition for Reconsideration and Reargument is hereby **DENIED**.

Former Justice Lamb did not participate in this matter.

A True Copy Patricia Nicola
As of: September 16, 2004
/s/ _____
Patricia Nicola, Chief Clerk, Supreme Court of Pennsylvania

APPENDIX B

IN THE SUPREME COURT OF PENNSYLVANIA

[August 16, 2004]

OFFICE OF DISCIPLINARY COUNSEL Petitioner	)
v.	)
FRANK J. MARCONE Respondent	)

No. 690 Disciplinary Docket No. 2

Attorney Registration No. 08967
(Delaware County)

ARGUED: MAY 14, 2003

OPINION

MR. CHIEF JUSTICE CAPPY
DECIDED AUGUST 16, 2004

In this matter, we consider Petitioner Office of Disciplinary Counsel's (the ODC) Petition for Adjudication of Contempt filed against Respondent Frank J. Marcone

alleging that Mr. Marcone has acted in violation of our July 1995 order suspending him from , *inter alia*, the practice of law. In determining whether the ODC's Petition should be granted, we are necessarily required to analyze the issue of whether an attorney who has been suspended from the practice of law by the Supreme Court of Pennsylvania may nevertheless maintain a law office in the Commonwealth of Pennsylvania fro the purposes of practicing before the United States District Court for the Eastern District of Pennsylvania. For the reasons more fully expressed below, we grant ODC's Petition and find Mr. Marcone in contempt of our order suspending him from the practice of law.

The salient facts underlying this matter are not in dispute. Mr. Marcone was admitted to the practice of law in Pennsylvania on June 4, 1963. By order dated July 6, {page 2}1995 our Court suspended Mr. Marcone from the practice of law for a period of four years after failing to return a $2,000 bail reimbursement to a client.[1] Specifically, our Court, per curium, ordered that Mr. Marcone be "suspended from the Bar of the Commonwealth for a period of four years, with credit for the period of suspension previously served" and that "he shall comply with all the provisions of Rule 217, Pa.R.D.E."[2] While more than four years have elapsed since the entry of the July 1995 order suspending Mr. Marcone from the practice of law, Mr. Marcone has not petitioned our Court for reinstatement, and thus he currently remains under

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[1] Mr. Marcone has previously received four informal admonitions, two private reprimands, and a public censure.

[2] Mr. Marcone was originally suspended from the practice of law for four years beginning on October 11, 1989. Subsequently, the suspension was vacated on June 11, 1990. The suspension was reinstated by our order of July 6, 1995.

suspension. Pa.R.D.E. 218.

Based upon our suspension of Mr. Marcone, the United States District Court for the Eastern District of Pennsylvania also suspended Mr. Marcone from practice before that court. On September 28, 1998, however, and while under suspension by our Court, the United States District Court for the Eastern District of Pennsylvania reinstated Mr. Marcone to practice before that federal district court. By order dated November 16, 1999, the United States Court of Appeals for the Third Circuit, however suspended Mr. Marcone for four years and until his reinstatement to the practice of law by the Supreme Court of Pennsylvania. According to Mr. Marcone, since his reinstatement by the federal district court, he "has restricted his practice to those areas which are permissible pursuant to his federal district court admission". Respondent's Brief at p. 6.

As part of this practice, Mr. Marcone has opened a law office that is located at 127 Chester Pike in Ridley Park, Delaware County, Pennsylvania where he meets with clients {page 3} and maintains his practice. Answer to Rule to Show Cause ¶ 16.p.6. In the window of Mr. Marcone's law office a sign, "Frank J. Marcone, Attorney at Law" rests in the front first floor of the law office. Answer to Rule to Show Cause, ¶17.p.6. Through this office, Mr. Marcone holds himself out as practicing in the federal district court. Answer to Rule to Show Cause, ¶31.p.9. Furthermore, Mr. Marcone asserts that he advises those with whom he meets of his limited federal practice. Respondent's Brief at p. 24. Additionally, Mr. Marcone has a printed letterhead on his stationery which states that his practice is limited to federal practice. Respondent's Brief at p. 6.

Finally, Mr. Marcone has represented clients in the United

States District Court for the Eastern District of Pennsylvania in *inter alia*, diversity jurisdiction cases. Answer Rule to Show Cause, ¶¶21-23, p. 7. At the time of the filing of his Answer to the Rule to Show Cause, Mr. Marcone was actively engaged in approximately 100 cases within the United States District Court for the Eastern District of Pennsylvania or other states where he is admitted pro hac vice. Answer to Rule to Show Cause, ¶36, p.11. Mr. Marcone offers, however, that he has not represented any person or engaged in any matters with in the Commonwealth other than matters within the federal district court. Answer to Rule to Show Cause, ¶37, p. 11-12.

In light of these facts and Mr. Marcone's maintenance of a law office while under suspension, on November 6, 2002, our Court entered a Rule to Show Cause why the Petition for Adjudication of Contempt alleging, *inter alia*, that Mr. Marcone's maintenance of a law office for the practice of law in Pennsylvania in violation of this Court's July 6, 1995 order. Thereafter, on December 12, 2002, our Court entered a Rule to Show Cause why the Petition for Adjudication of Contempt should not be granted and Mr. Marcone found I contempt of our July 6, 1995 order. Mr. Marcone filed an answer to the rule on December 23, 2002. By order dated February 11, 2003, we granted Mr. Marcone's request for briefing and oral argument limited to the issue of whether an attorney, who has been suspended from the practice of law by the Supreme Court of Pennsylvania, can maintain a law office in the Commonwealth {page 4}for purposes of practicing before the United States District Court for the Eastern District of Pennsylvania.[3]

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[3] Our Court has exclusive jurisdiction to consider this matter as a general proposition pursuant to our inherent and exclusive power

With this background in grasp, we will consider the parties contentions regarding whether Mr. Marcone is in contempt of our July 6, 1995 order *seriatim.*[4] [5]
In addressing these arguments, we begin by first recognizing that the polestar of this Court's regulation of attorney conduct in our Commonwealth is its significant responsibility to protect the public in general, and clients in particular, from unfit attorneys, and to uphold the integrity of our legal system. Office of Disciplinary Counsel v. Keller, 506 A. 2d 872, 875 (Pa. 1986). See also, Office of Disciplinary Counsel v. Grigsby, 425 A. 2d 730, 733 (Pa. 1981)(purpose

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to supervise the practice of law in our Commonwealth and the conduct of attorneys who are its officers. Pa. Const. Art. V,§10(c)(The Supreme Court has the inherent and exclusive power of supervision of all officers of the judicial branch): Pa. R.D.E. 103 (same). Similarly, whether one is engaging in actions in violation of our oreder or Ruels is within the exclusive jurisdiction of our Court. Pa. Const. art. V.§10()Pa.R.D.E.201(a)(3) (exclusive jurisdiction of the Supreme Court extensd to any formerly admitted attorney with respect to acts subsequent to suspension which amount to the practice of law or constitute a violation of the rules of disciplinary enforcement). In Re: Jones, 814 A.2d 177 (Pa. 2002)

[4] As a general matter, the disobedience of a court order, in the absence of the inability to comply with that order, constitutes contempt. In Re: Jones. To establish the failure to comply with a court order, the burden is on the complaining party, here the ODC, to prove noncompliance by a preponderance of the evidence. Barrett v. Barrett, 368 A.2d 616 (Pa. 1977).

[5] As this contempt matter is currently before our Court in its original jurisdiction, there is no lower tribunal's determination for our review, and thus there is no applicable standard or scope of review.

of disciplinary system is to protect the public, the profession, and the courts). This momentous obligation stems from our constitutional mandate or regulating the practice of law in our Commonwealth. Pa. Const Art. V. Sec. 10 (). It is the *sine qua non* of a healthy {page 5} and respected profession and of a protected citizenry. Thus, this obligation will be the lens through which we view the arguments advanced by the parties in this case.

In support of its Petition for Adjudication of Contempt, the ODC offers that our Rules of Disciplinary Enforcement strictly prohibit Mr. Marcone from maintaining a law office in Pennsylvania, even if such office is limited to federal practice. According to the ODC, the maintenance of a law office also violates the common law of our Commonwealth, citing to our Court's 1957 decision in Ginsburg v.Kovrak, 139 A.2d 889 (Pa.1957).[6] Furthermore, as a matter of public

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[6] ODC places great emphasis upon Ginsburg v. Kovrak, 139 A.2d 889 (Pa.1957), *appeal dismissed for want of substantial federal question.*, 358 U.S.52 (1958), in which our Court, in a per curium opinion, prohibited an attorney who was not admitted to the practice of law in Pennsylvania, but admitted in, inter alia, the United States District Court of the Eastern District of Pennsylvania, from maintaining an office and practicing law in Philadelphia County and form holding himself out to the public as being entitled to practice law in that county. While ODC's reliance upon Ginsburg is justified, our decision in that appeal is of somewhat limited value because the Court's per curium opinion offers scant analysis as to hte underpinnings of its decision. Furthermore, the Court in Ginsburg spoke to the admission of an attorney to practice, and this discussion carries less weight today due to the advent of federal bar admission requirements and the discipline of attorneys practicing before federal courts, which did not exist at that time, and which left such admission requirements and attorney regulation solely to the states. Ginsburg certainly remains however,

policy, the ODC offers that permitting Mr. Marcone to maintain a law office will seriously undermine this Court's ability to protect the public and the profession from unfit attorneys.

Under our Rules of Disciplinary Enforcement, a "formerly admitted attorney" (a status which includes one who has been suspended)[7] may not engage in any form of law-related **{page 6}** activities in this Commonwealth...." Pa. R.D.E. 217(j)[8] [9] The ODC offers that Rule 217(4)(ii) in particular prohibits a formerly admitted attorney from performing any law related services from an office that is not staffed, on a full time basis, by a supervising attorney. The ODC acknowledges, however, that this subsection of the Rule does not speak to the maintenance of a law office by a suspended attorney who is admitted before another court. Thus, the question becomes whether under our Rule, an attorney who has been suspended from engaging in any form

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consistent with our determination today regarding the maintenance of a law office by a suspended attorney.

[7] Pa.R.D.E. 102 defines "formerly admitted attorney" as "[a] disbarred, suspended or inactive attorney" Mr. Marcone, is a formerly admitted attorney due to our prior order of suspension.

[8] This prohibition on any form of law-related activities does have certain limited exceptions which are not implicated in this matter. See Pa. R.D.E. 217(j)(1)-(3)

[9] See also, 42 Pa.C.S.§2524 (setting forth penalty for those who within Commonwealth practice law or hold themselves out as being entitled to practice law without being an attorney at law); 42 Pa. C.S.§ 2521 ("[p]ersons admitted to the bar of the courts of this Commonwealth and to practice law pursuant to general rules shall thereby hold the office of attorney at law.)

of law related activities by maintaining a law office in the Commonwealth for purposes of practicing before the United States District Court for the Eastern District of Pennsylvania.

We have neither addressed what constitutes "any form of law-related activities" nor explored the breadth of that concept. We can say, however that regardless of the boundaries of "any form of law-related activities", it certainly includes the practice of law. The ABA Model Rules of Professional Conduct do not attempt to define the "practice of law" leaving it to the various jurisdictions. ABA Model Rules of Professional Conduct Rule 5.5. And the states have not come to a uniform approach as to what constitutes the practice of law. See, e.g. In the Matter of the Application of Mark W., 491 A.2d 576, 579 (Md.1985).

In Pennsylvania, while Rule 217 prohibits a formerly admitted attorney from engaging in any form of law-related activities, the Rule does not establish a standard for {**page 7**} what constitutes the practice of law. Pa. R.D.E. 217 Note. Likewise, our Court has not attempted to provide a comprehensive statement of what activities comprise the practice of law, nor have we believed it wise or necessary to engage in the task of defining what the practice of law means for all purposes. Shortz et al v. Farrell, 193 A.20, 21 (Pa. 1937)(attempt to formulate a precise definition of the practice of law would be more likely to invite criticism than to achieve clarity). Thus, as a general proposition, we have explained what specific activities constitute the practice of law on a case-by-case basis.

Our Court has, however, as early as 1937 outlined three broad categories of activities that constitute the practice of law. (1) the instruction and advising of clients in regard to the law so that they may pursue their affairs and be informed as to their rights and obligations; (2) the preparation of

documents for clients requiring familiarity with legal principles beyond the ken of ordinary lay persons; and (3) the appearance on behalf of clients before public tribunals in order that the attorney may assist the deciding official in the proper interpretation and enforcement of the law. Id. More recently, our Court expressed that the practice of law is implicated by the holding out of oneself to the public as competent to exercise legal judgment and the implication that he or she has the technical competence to analyze legal problems and the requisite character qualifications to act in a representative capacity. See Dauphin County Bar Association v. Mazzacaro, 351 A.2d 229,232-233 (Pa.1976)(considering whether licensed casualty adjusters representation of third parties constituted the unauthorized practice of law).

We find the aspect of the practice of law that includes the instruction and advising of persons with respect to the law so that they are cognizant of their rights and responsibilities and the related holding oneself out to the public as competent to exercise legal judgment to be particularly relevant to the circumstances in this case. "The core element of practicing law is the giving of legal advice to a client and placing of oneself in the very sensitive relationship wherein the confidence of the client, and the management of his affairs, is left totally in the { page 8} hands of the attorney" In the Matter of Perrello, 386 N/E.2d 174, 179 (Ind.1979). "The undertaking to minister to the legal problems of another creates the attorney-client relationship without regard to whether the services are actually performed by the one so undertaking the responsibility or are delegated tor subcontracted to another." Id. Similarly, when a person represents to the public that he has the competence to analyze legal problems and the required qualification to represent clients, and that person is not adequately trained or regulated, the dangers to the public are manifest. Dauphin County Bar

Association. 351 A.2d at 232.

As noted above, the practice of law is implicated by holding oneself to the public as being competent in the law. Likewise, advising clients on their legal rights and responsibilities comprises the practice of law. Through the maintenance of a law office within the borders of our Commonwealth, Mr. Marcone, a suspended attorney, holds himself out to the citizens of our Commonwealth as one competent to exercise legal judgment and competent in the law. Similarly, through the maintenance of a law office, Mr. Marcone counsels clients as to their legal rights and obligations. Thus we conclude that by Mr. Marcone's maintenance of a law office, from which he holds himself out to the public and advises clients as to their legal rights, he has engaged in the practice of law in this Commonwealth.

That Mr. Marcone's maintenance of a law office is limited solely to his practice before the United States District Court does not alter our conclusion.

First, neither our Rules nor our case law have limited the concept of practicing law to Pennsylvania law. Indeed, our Rule speaks in expansive terms. As noted above, "a formerly admitted attorney *may not engage in any form of law-related activities in this Commonwealth...*" Pa.R.D.E. 217 (j)(emphasis supplied). Likewise, our case law { **page 9**} suggests no such demarcation. See Dauphin County Bar Association, 351 A.2d at 232; Shortz, 193A. At 21.

Additionally, current legal practice consists of a complex and interconnected web of legal knowledge, concerns, strategies, and consequences. More specifically, holding oneself out to the public as engaging in a general federal practice and advising clients as part of a federal practice today

necessarily implicates counseling clients on state law issues. State law concerns are the foundation of federal diversity actions. Even federal law matters are in many instances "only a federal overlay to applicable state law." In re Peterson, 163 B.R. 665, 673 (Bankr.D.Conn. 1994)("[s]tate law issues are inevitably and inextricably intertwined with bankruptcy law issues")' In re Lite Ray Realty Corp., 257 B.R. 150, 155 (Bankr.S.D.N.Y. 2001); see also, Kennedy v. Bar Association of Montgomery County, 561 A.2d 200, 210-11 (Md. 1989); Samuel Brakel and Wallace Loh, Regulating the Multistate Practice of Law. 50 Wash. L.Rev. 699, 736 (1975)(advocating federal admission procedures to increase their consideration of state standards and requirements due to applicability of state laws and procedures in federal courts). Thus, to suggest that because maintenance of an office is limited to federal practice, it does not constitute the practice of law within the borders of a state, is to ignore the realities of current legal practice.[10]

Finally considerations of public policy undergird our determination. As noted above, the Court's core obligation in regulating attorney conduct is to protect the citizens of our **{page 10}** Commonwealth, to secure the public's interest in

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[10] Mr. Marcone is correct when he suggests that the world today is a far cry from that of Chippy Patterson's when an attorney could practice without an office. See Arthur H. Lewis, The Worlds of Chippy Patterson, (Harcourt, Brace and Company, New York 1960)(describing the life of Chippy Patterson who although born into the world of Philadelphia's privileged and wealthy, rejected his comfortable beginnings to practice law in Philadelphia City Hall where he represented criminal defendants, keeping important legal documents in his hat). Yet the realities of today's complex legal practice also refute Mr. Marcone's suggestion that the maintenance of a law office dedicated to a federal practice can be viewed in a vacuum.

competent legal representation, and to ensure the integrity of our legal system. The embarkation of advising a client in legal matters includes decision making regarding the status of potential claims and deciding which claims to pursue. This last aspect of counseling clients is especially relevant, as a suspended attorney maintaining a law office dedicated "exclusively" to the practice of federal matters would cant advice artificially in the direction of the attorney's "limited" practice. Charles W. Wolfram, Sneaking Around in the Legal Profession: Interjurisdictional Unauthorized Practice by Transaction Lawyers. 36 S. Tex.L.Rev. 665, 698 (1995). Thus pragmatically speaking, to permit within our Commonwealth borders without regulation the maintenance of a law office by a suspended attorney, dedicated to an "exclusive" federal practice, in which such counseling could take place, would be to leave our citizens vulnerable to misguidance and exploitation. Related thereto, limiting the concept of the practice of law to Pennsylvania law, exclusive from federal matters, would be virtually impossible to apply and enforce. Kennedy, 561 A.2d at 208, and would defeat our mandate of protecting the public from incompetent or unethical practitioners. Indeed, the operation of a law office by a suspended attorney could be used as a "shield behind with to conduct an unlimited-in-fact law practice" Wolfram, Sneaking Around in the Legal Profession: Interjurisdictional Unauthorized Practice By Transactional Lawyers, 36 S. Tex.L.Rev. At 698. See also, In re Lite Ray Realty Corp. 257 B.R. at d155 (any attorney proposing to limit his pracgtice to feederal law creates a distinction that is unrealistic and impossible to enforce).

In sum, by our order of July 6, 1995, Mr. Marcone was suspended from engaging in any form of law-related activities in this Commonwealth, which includes the practice of law. Pa.R.D.E. 217. Through the maintenance of a law office,

Mr. Marcone, although suspended, holds himself out to the citizens of our Commonwealth as one competent exercise legal judgment and as one competent in the law, and counsels clients as to their { **page 11**} legal rights and obligations, even though for purposes of practicing before the United States District Court for the Eastern District of Pennsylvania.. We find that by his maintenance of such a law office, Mr. Marcone has engaged in the practice of law. This is in violation of our Rule 217, and thus ,our order of July 6, 1995, ,,prohibiting him from engaging in *inter alia*, the practice of law. Therefore, we conclude that Mr. Marcone is in contempt of our prior order.[11]

Our determination regarding the scope of Rule 217 and our conclusion that a suspended attorney maintaining a law office in our Commonwealth for purposes of practicing before a federal court is engaging in the practice of law are buttressed by similar decisions from our sister states. The few courts that have addressed issues akin to the one *sub judice* have been consistently and notably hostile to the notion of an attorney who is not a member of the state bar maintaining a law office for purposes of a federal practice. These courts have concluded that maintaining such an office constitutes the unauthorized practice of law for purposes of state law. See e.g. in the Matter of Perrello, 386 N.E. 2d at

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[11] We emphasize that the issue before us today is a very narrow one. We are in no fashion speaking to Mr. Marcone's ability to be admitted to the United States District Corut for the Eastern District of Pennsylvania or to represent clients in that court. The sole issue before us is whether Mr. Marcone's maintenance of a law office within our Commonwealth constitutes a contempt of our prior order suspending him from all law-related activities which include *inter alia*, the practice of law in our Commonwealth. We find that it does.

179 (attorney suspended from practice of law in Indiana engaged in unauthorized practice of law when maintaining a law office for purposes of federal practice); Attorney Grievance Commission of Maryland v. Harris Smith, 737 A.2d 567 (Md./1999)(attorney maintaining an office and advising clients for practice of federal and non-Maryland law constituted the unauthorized practice of law); Kennedy v. Bar Association of Montgomery County, 561 A.2d 200(Md. 1989)(same). See also, Spanos v. Skouras Theaters Corp., 364 F.3d 161, 171 (2d, Cir.1966)(not sanctioning practice whereby attorney "not admitted to practice by a { page 12} state maintains office there and holds himself out to give advice to all comers on federal matters"); In re Lite Ray Realty Corp., 257 B.R. at 156 (federal court admission does not permit attorney to open a local office and practice generally, even if practice limited to bankruptcy); In re Peterson, 163 B.R. at 673 (attorney admitted in federal court in Connecticut could not maintain his sole office in that state and hold himself out to resident of Connecticut as a practitioner in bankruptcy law); In re Roel, 144 N.E. 2d 24 (NY > 1957)(maintaining law office and giving advice solely on Mexican law enjoined as unauthorized practice of law in New York). Accord, Wolfram, *Sneaking Around In The Legal Profession, Interjurisdictional Practice By Transactional Lawyers*, 36 Tex. L. Rev. At 698.

Mr. Marcone, however raises a number of arguments as to why we should not find him in contempt of our prior order. We find none of these contentions to be meritorious.

First, Mr. Marcone cites to 28 U.S.C. § 2701(a)(the Supreme Court and all courts established by act of Congress shall prescribe rules for the conduct of their business) and 28 U.S.C. § 1654("In all courts of the United States, the parties may plead and conduct their own cases personally or by

counsel as by the rules of such court, respectively, are permitted to manage and conduct causes therein") and argues that these federal statutes indicate the authority of the federal court to regulate lawyers admitted to federal practice. Furthermore, Mr. Marcone offers Local Civil Rule 83.6 VII (I) of the United States District Court for the Eastern District regarding admission, which states:

> Any attorney who is reinstated may practice before this court' notwithstanding the refusal or failure of any state court to reinstate said attorney to practice. However, reinstatement to practice before this court does not authorize an attorney to practice in any other jurisdiction, and no attorney shall hold out himself or herself as authorized to practice law in any other jurisdiction in which the attorney is no admitted.

{page 13}

According to Mr. Marcone, under these statutes and local rule, he has the right to practice before the federal court regardless of his status as an attorney in Pennsylvania. Mr. Marcone asserts that relevant federal statutes and rules establish that the regulation of federal practice is within the authority of the federal courts and the right to practice "logically" includes the maintenance of a law office for that practice [12]. Thus, there exists no authority on the part of our

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[12] Mr. Marcone relies upon Desilets v. Delta Home Improvement, Inc., 291 F.3d 925 (6th Cir.2002) in support of his conclusion that it is solely for the federal courts to regulate the lawyers admitted to federal practice. Mr. Marcone's reliance on Desilets is misplaced for a number of reasons. First, that decision dealt with whether an individual was an "attorney" for purposes of the bankruptcy code with respect to practice in a Michigan federal bankruptcy court and

Court to prohibit his maintenance of a law office dedicated to a federal practice. He also makes a seemingly separate argument that to find {page 14} him in contempt would violate the Supremacy Clause of the United States Constitution. As both of these arguments are related and,

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did not deal with the maintenance of a law office in a state by a suspended attorney. The Desilets court concluded that federal standards control admission to the federal bar. Nothing herein is contrary to that principal. Second, that decision did not deal with an attorney that was suspended from the practice of law in the state in which he wished to practice. Indeed the attorney at issue was admitted to the bar of the state of Texas. Finally, to the extent that Desilets can be read to be contrary to our decision today, we are not bound by the decisions of lower federal courts. As noted above, we find tht the discussions of the practice of law contined in In re Peterson, 163 B.R. at 873 and in re Lite Ray Realty Corp., 257 B.R. at 155, more accurately reflect the realities of the practice of law and bankruptcy law in particular.

Mr. Marcone also offers as "[o]f interest" the United States Supreme Court's decision in Sperry v. Florida, 373 U.S. 370 (163). Sperry dealt with a lay person who represented patent applicatants before the United States Patent Office. The United States Supreme Court held that the state of Florida could not prohibit this layperson from representing individuals with respect to patent applications. The Court's decision was based upon a federal statute which specifically permits the Commissioner of Patents to authorize practice before the Patent Office by non-lawyers. Unlike the situation at bar, Sperry dealt with the ability of a layperson, expressly authorized by federal statute, to work in a specialized area of federal-patent law, before an agency the Patent and Trademark offcie, which had a long tradition of regulating the practitioners before it. Sperry, 373 U.S. at 387-90. Thus it is clearly distinguishable from the circumstances in this case regulating a suspended attorney's maintenance of a law office and does not compel a result different from the one we reach today.

although not stated as such, sound in preemption, we will construe these arguments as a single assertion that it is solely for the federal courts to regulate the practice of law of its members to the exclusion of our Court.

The Supremacy Clause of the United States Constitution prohibits states from enacting laws that are contrary to the laws of our federal government. "This Constitution and the Laws of the United States ...shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const. Art Vi, cl.2. It is through this clause that the United States Congress may preempt state law, we start with the assumption that the historic police powers of the States [are] not to be superseded by ...Federal Act unless it [is] the clear and manifest purpose of Congress." Cipollone v. Liggett Group, 505 U.S. 5043, 516 (1992)(citing Rice v. Sante Fe Elevator Corp. 331 US. 218, 230 (1947)). There are three ways in which a state law may be preempted. First state law may be preempted where the United States Congress enacts a provision which expressly preempts the state enactment. Pacific Gas & Electric Co. v. State Energy Resources Conservation and Development Comm'n, 461 U.S. 190, 204 (19830. Likewise, preemption may be found where Congress has legislated in a field so comprehensively that it has implicitly expressed an intention to occupy the given field to the exclusion of state law. Schneldenwind v. ANR Pipeline Co., 485 U.S. 293, 299-300 (1988). Finally a state enactment will be preempted where a state law conflicts with a federal law. Id. Such a conflict may be found in two instances, when it is impossible to comply with both federal and state law, Florida Lime & Avocado Growers, Inc., v. Paul, 373 U.S. 132, 142-43 (1963), or where the state law "stands as an obstacle to the accomplishment and execution of the full purposes and

objectives of Congress." Hines v. Davidowitz, 312 U.S. 52, 67 (1961). {page 15}

First, Mr. Marcone fails to offer any statute or rule that expressly preempts our state regulation of the practice of law in general or of Mr. Marcone's maintenance of a law office within our borders in particular, Furthermore, the statues and rules offered by Mr. Marcone fall far short of establishing that the federal enactments are so comprehensive that they demonstrate that Congress has intended to occupy regulation of the filed to the exclusion of our state. Simply because federal statutes allow for the promulgation of rules, and permit one to conduct cases by counsel in federal courts, certainly does not evidence a Congressional intent to divest state courts of their authority to regulate the practice of law by suspended attorneys within their borders. Likewise, while under the local rules for the United States District Court for the Eastern District of Pennsylvania an "attorney may be reinstated to practice before this court notwithstanding the refusal of a state court to reinstate the attorney to practice." E.D. Pa R.Civ. P. 83.6 VII(I), this does not evidence an intent to prohibit our Court from regulating the maintenance of a law office by a a suspended attorney for the proffering of himself to the public or for client consulting and advice. In light of the historical licensing and regulation of attorneys by the states within their respective jurisdictions, Leis v. Flynt, 439 U.S. 438 (1979), and the failure of Mr. Marcone to offer a federal statute or rule that even minimally suggests an intention by Congress to limit the breadth of our Rules in this regard, we simply cannot find support for the proposition that Congress has expressed the sweeping intention of occupying the filed to the exclusion of the states.

Finally, we find no conflict between the federal statutes and rules and our state rules. While an attorney's admission

to federal court may permit him to represent clients in federal court, it is not impossible or even inconsistent in the least for Marcone to comply with our Court's authority to regulate a suspended attorney's maintenance of a law office within our borders from which he holds himself out to the public and consults with clients, even if "limited" to a federal practice. In re Lite Ray Realty Corp. , 257 B.R. at 156 (federal court **{page 16}** admission does not permit attorney to open a local office and practice generally, even if practice limited to bankruptcy. In re Peterson, 163 B.R. at 675 (attorney admitted in federal court in Connecticut could not maintain his sole office in that state and hold himself out to residents of Connecticut as a practitioner in bankruptcy law.); see also, in the Matter of Perrello, 386 N.E. 2d 174 at 179; Attorney Grievance Commission of Maryland v Harris-Smith, supra.

For the same reasons we cannot say that our regulation of the maintenance of a law office significantly frustrates the accomplishment of the purposes of Congress. While regulation of the maintenance a (sic) law office through which one holds himself out to the public and counsels clients may place some burden on one who has been suspended from the practice of law in a particular state but who is nevertheless admitted before a federal court, our regulation of those who maintain a law office within our borders simply does not, without more, result in conflict pre-emption. Accord, Northwest Central Pipeline Corp. v. State Corporation Commission of Kansas, 489 U.S. 493 (1989)(some burden of federal regulatory goals does not constitute conflict pre-emption). Indeed, we find that in these circumstances, the regulation of a suspended attorney's law office where he holds himself out to the public and counsels clients in an area in which the applicable federal states and rules and this Courts Rules coexist. Based upon the above, we conclude that our regulation of Mr Marcone's maintenance of a law office

within our Commonwealth is not preempted by federal statute or local rule and thus does not run afoul or the Supremacy Clause of the United States Constitution.

Mr. Marcone raises two additional bases, grounded in the United States Constitution, which he asserts precludes our finding him in contempt. In a somewhat confusing argument, Mr. Marcone offers that finding him in contempt for maintaining a law office would burden interstate commerce and constitutes economic protectionism in violation of the Commerce Clause of the United States Constitution. Specifically he contends **{Page 17}** prohibiting him from maintaining an office limited to practice within the federal system would amount to economic protectionism and have an impact on interstate commerce "since there is no local benefit for the state prohibition since the federal court is regulating Mr. Marcone's conduct." Respondent's Brief at p. 27.

The United States Constitution provides that "Congress shall have Power ...to regulate Commerce ...among the several states". U.S. Const. Art 1 §8. While the Commerce Clause expressly speaks only to the ability of Congress to regulate interstate commerce, it has been interpreted to contain an implied limitation of the power of the States to interfere with or impose burdens on interstate commerce."Western & Southern Life Ins. Co. V. State Bd. Of Equalization of California, 451 U.S. 648, 652 (1981). This limitation has been sometimes coined the "negative" or "dormant" Commerce Clause. That is implicated in this case. The dormant Commerce Clause "prohibits economic protectionalism-that is, regulatory measures designed to benefit in-state economic interest by burdening out-of-state competitors." New Energy Co. of Indiana v. Limbach, 486 U.S. 269, 273 (1988)

We find no such benefit or burdens are implicated in this matter. First, it is Mr. Marcone as a suspended in-state Pennsylvania attorney that has the in-state interest. He does not explain how his in-state economic interests are benefitted by burdening out -of state competitors. As a suspended in-state attorney, we cannot perceive in these circumstances how his interests are benefitted to the detriment of out-of - state competitors. Thus, as Mr. Marcone has not established that there exists a burden on interstate commerce that favors in-state interests, Mr. Marcone's assertion of a Commerce Clause violation falls. Accord, Tolchin v. Supreme Court of the State of New Jersey. 111 F.3d 1099 (3rd Cir. 1997)(finding New Jersey's bona fide office requirement does not discriminate against out-of-state attorneys) **{Page 18}** Mr. Marcone's final constitutional argument is based upon the First Amendment to the United States Constitution. Mr. Marcone offers without analysis that "the prohibition of having an office could directly affect the right of association that is inherent in the First Amendment analysis." Respondent's Brief at p. 29. Mr. Marcone, however, does not claim that our determination seeks to suppress speech or associational rights that the Commonwealth finds distasteful or to quash his political views. See NAACP v. Button, 371 U.S. 415 (1963), or to prohibit mutual assistance in asserting legal rights. See United Transportation Union v. Michigan Bar. 401 U.S. 576 (1971). Rather enforcement of our July 1995 order, which would include the prohibition from maintaining a law office whereby one holds himself out to the public as competent in the law and counsels clients as to their legal rights and obligations while suspended from the practice of law, may impact Mr. Marcone's procurement of remunerative employment, a matter which is only marginally affected with First Amendment concerns. See Ohralik v. Ohio State Bar Assn. 436 U.S. 447 (1978); NAACP, 371 U.S. at 439-443.

The First Amendment to the United States Constitution states in relevant part, "Congress shall make no law...abridging the freedom of speech, ...or the right of the people peaceably to assemble..." U.S. Const. amend. I. It is well settled, however, that the government may limit the exercise of a citizen's First Amendment rights where government regulations are aimed to address legitimate concerns and not designed to control or limit the content of First Amendment freedoms. See Konlgsberg v. State Bar of California, 366 U.S. 36-50-51 (1961) (withholding of bar membership constitutional where applicant refused to answer questions regarding membership in Communist Party thus thwarting investigation into his "qualifications"); see also, Roberts v. United States Jaycees. 488 U.S. 609, 623 (1984) (right to associate for expressive purposes).

With respect to restrictions on speech a governmental regulation will be upheld, as a general proposition, if four criteria are met. (1) the regulation is within the constitutional **{page 19}** power of the state; (2) it furthers an important or substantial governmental interest; (3) the governmental interest is unrelated to the suppression of free speech; and (4) the incidental restriction on alleged first amendment freedoms is no greater than essential to the furtherance of that interest. United States v. Albertini, 472 U.S. 675, 667 (1985); United States v. O'Brien, 391 U.S. 367, 376 (1968). Similarly, the First Amendment right to associate is not absolute and infringements on the right may be justified by regulations adopted to serve a compelling state interest unrelated to the suppression of ideas, that cannot be achieved through means significantly less restrictive of associated freedoms. See Roberts, 468 U.S. at 623 (1984).

Thus even assuming arguendo, that Mr. Marcone has demonstrated that a First Amendment right is implicated in his

maintaining a law office while under suspension, our regulation of Mr. Marcone's maintenance of a law office does not run afoul of the First Amendment. First as noted above, a state's constitutional power to regulate the practice of law is well established. Konigsberg. Second, our Court has not only an important and substantial interest, but a compelling interest in regulating the practice of law within our borders; protecting our citizens from those unfit to practice law. See Keller; Grigsby; see also Goldfarb v. Virginia Bar, 421 U.S. 773 (1975) (recognizing that states have a compelling interest in the practice of professions within their boundaries). Here, the prohibition of maintaining a law office is legitimate and justified to prevent those who are suspended from the practice of law from holding themselves out to the public as competent to exercise legal judgment and as being competent in the law, and from counseling and advising clients on their legal rights and responsibilities through the maintenance of a law office within our Commonwealth. Third, such prohibition is clearly not designed to limit the content of any First Amendment freedoms. It is not targeted at ideas but is aimed at preventing harm to our citizens. Accord, Kongsberg, 366 U.S. 49-51. Finally, we find that this restriction is no greater than absolutely necessary to further the significant **{page 20}** governmental interest in protecting the public and the profession. As noted above, we are not by our decision today dictating whom the federal courts may admit to practice or who may practice in a federal court. We conclude that our determinations that the maintenance of a low office in which one holds himself out to the public as competent in the law and counsels clients with respect to their legal obligations constitutes the practice of law and that Mr. Marcone, by maintaining such a law office is in contempt of our July 1995 order do not violate any First Amendment right of free speech

or fee association.[13]

In conclusion, we hold that by maintaining a law office in the Commonwealth, by which he holds himself out to the citizens of our commonwealth as one competent to exercise legal judgment and as one competent in the law, and counsels clients as to their legal rights and obligations, Mr. Marcone is in contempt of our order of July 6, 1995 suspending him from the practice of law. [14] Thus we grant the ODC's Petition for Adjudication of Contempt and hereby order that Mr. Marcone"

(1) Shall comply fully with the provisions of Rule 217 of the Rules of Disciplinary Enforcement pertaining to suspended attorneys;

(2) Shall not maintain an office for the practice of law of any kind within the Commonwealth of Pennsylvania where by he holds himself out to the citizens of our Commonwealth as one competent to exercise legal judgment and as one competent in { **page 21**} the law, and counsels clients as to their legal rights and obligations until such time that he is reinstated to the practice of law by our Court;

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[13] Mr. Marcone also suggests that finding him in contempt "would appear to implicate" due process and equal protection concerns, but he fails to offer any meaningful analysis or argument in support of these assertions, thus, we reject such claims.

[14] Mr. Marcone has also filed a "Motion to Dismiss the Petition for Adjudication for Contempt" asserting, inter alia, that he had no notice that his conduct was contemptuous. For the reasons discussed above finding Mr. Marcone's maintenance of a law office to contstute the practice of law in violation of our July 1995 oreder, we deny Mr. Marcone's motion.

(3) Shall not hold himself out as an attorney authorized to practice law in this Commonwealth until such time that he is reinstated to the practice of law by our Court; and

(4) Shall surrender to the Disciplinary Board of the Supreme Court of Pennsylvania:

(a) any certificate issued to him by the Court Administrator or Pennsylvania under Rule 219 (e) (relating to periodic assessment of attorneys; voluntary inactive status).

(b) any certificate of good standing issued under Pennsylvania Bar Admission Rule 201(d) (relating to certification of good standing); and

(c) any certificate of admission issued under Pennsylvania Bar Admission Rule 231 (d)(30 (sic) (relating to action by the aProthonotary).

It is further ordered that:

(5) This matter is referred to the Disciplinary Board for a hearing to recommend the appropriate sanction.

Former Justice Lamb did not participate in the decision in this case.

Judgment entered August 16, 2004.

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Deputy Prothonotary.